

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-209843.2

DATE: October 25, 1983

MATTER OF: Somers Construction Company

DIGEST:

An allegation that a contractor experience requirement is unduly restrictive is dismissed as academic where bids were opened after the protest was filed, and the protester's bid was only the 12th lowest received; since the protester is not the low bidder, it would not be in line for award even had the solicitation not contained the allegedly restrictive requirement.

Somers Construction Company protests the award of any contract under invitation for bids (IFB) No. N62472-80-B-0184, issued by the Department of the Navy for construction of a heating plant at Griffiss Air Force Base, Rome, New York. We dismiss the protest.

Somers contends that an IFB provision requiring the contractor to possess experience in constructing the same or substantially similar facilities exceeds the Navy's minimum needs and thus is unduly restrictive. It believes experience in constructing other types of facilities of similar complexity should be acceptable. The Navy maintains that this project is sufficiently complex to warrant this specific experience requirement.

Somers filed its protest in our Office 1 day prior to the May 19 bid opening and also submitted a bid, apparently in anticipation that the experience requirement would be relaxed. Its bid of \$35,285,000 was 12th low of 17 bids received and \$8,717,000 higher than the low bid of \$26,568,000 submitted by Brinderson Constructors, Inc. The Navy determined on July 14, 1983 that performance of the contract would be unduly delayed by the failure to make a prompt award to Brinderson. See Defense Acquisition Regulation § 2-407.8(b)(3)(ii). Award was made to Brinderson shortly thereafter.

In view of Somers' standing as only the 12th low bidder, we will not consider the merits of its protest. Somers was rejected not because of its failure to satisfy

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the experience requirement, but because it was not the low bidder. Thus, even had the Navy used a more lenient experience requirement, Somers would not be in line for award. Under these circumstances, the protest is academic; no immediate purpose would be served by our review of the matter. See S.A.F.E. Export Corporation, B-208526, September 27, 1982, 82-2 CPD 283; Van-Tek, Inc., B-204233, March 8, 1982, 82-1 CPD 207 (GAO will not review a timely pre-bid opening protest of allegedly restrictive specifications where bid opening subsequently discloses that the protester is not the low bidder, and it does not appear that the specifications complained of had a material impact on the protester's bid price).

Somers believes our review of this matter is warranted because it would be helpful to bidders on future similar procurements. As is implicit in our policy of not reviewing academic questions, however, we consider the interest of such bidders sufficiently protected by the availability of the bid protest process for challenging alleged restrictive experience requirements in future procurements.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel